

ORIGINAL
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GARDEN CITY BOXING CLUB, INC.,

Plaintiff,

-against-

MEMORANDUM AND ORDER

No. 06-CV-4874 (FB) (RER)

FOCUSED ENTERPRISES, LTD. d/b/a
BROWN SUGAR CLUB, and GREGORY
JORDAN, SR., and JUDY JORDAN,

Defendants.
-----x

Appearances:

For the Plaintiff:

PAUL J. HOOTEN, ESQ.

Paul J. Hooten & Associates

5505 Nesconset Highway, Suite 203

Mt. Sinai, NY 11766

BLOCK, Senior District Judge:

On May 9, 2007, Magistrate Judge Reyes issued a Report and Recommendation ("R&R") recommending that a default judgment of \$2,825 be entered in favor of plaintiff, Garden City Boxing Club, Inc. ("Garden City"), and against defendant Focused Enterprises, Ltd. d/b/a Brown Sugar Club. The R&R recited that "[a]ny objections to the recommendations made in this report must be filed with the Clerk of the Court and the Honorable Frederic Block within ten business days of receipt," R&R at 8, and that "[f]ailure to file timely objections may waive the right to appeal the District Court's Order." *Id.* Garden City's counsel served a copy of the R&R on May 11, 2007, *see* Docket Entry # 16 (Certificate of Service), making objections due by May 31, 2007. *See* Fed. R. Civ. P. 6. To date, no objections have been filed.

Where, as here, clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R & R without *de novo* review. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). The Court will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error, see *Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

As no error appears on the face of the R&R, the Court adopts it without *de novo* review; however, the Court declines to direct entry of judgment because Garden City's claims against defendants Gregory Jordan, Sr., and Judy Jordan – who have not been served with the complaint – remain pending. Accordingly, Garden City shall, within twenty (20) days of the date of this Memorandum and Order, either voluntarily dismiss its claims against the Jordans pursuant to Federal Rule of Civil Procedure 41(a)(1), or show cause why those claims should not be dismissed for failure to perfect service within 120 days of filing the complaint, as required by Federal Rule of Civil Procedure 4(m).

SO ORDERED.

/signed/

FREDERIC BLOCK /
Senior United States District Judge

Brooklyn, New York
June 4, 2007